

Section 272 review by reorganizing and changing its designation of a separate affiliate. During the oral argument hearing, Staff indicated its belief that the bookkeeping issues would be resolved by the supplemental review to be conducted by KPMG. Staff also indicated, however, that it had requested additional information from Qwest and, after reviewing it, Staff would file supplemental comments on any remaining Section 272 issues. Tr. p. 136. Staff has not yet filed its supplemental comments. No other written comments were filed regarding the Section 272 separate affiliate requirements.

Based on this record and the Facilitator's report, the Commission conditionally finds that Qwest has put in place a separate affiliate to comply with the requirements of Section 272, but will reserve a final decision until Staff has filed its supplemental comments. The Commission will accept the supplemental comments to be filed by Staff, and will address any additional Section 272 issues in a subsequent decision. The Commission also notes that Section 272(d) requires Qwest to obtain an audit every two years to determine whether it is properly complying with Section 272 and FCC regulations for separate affiliate transactions. Qwest is required to file those audits with each state commission, and this Commission will continue to monitor Qwest's separate affiliate obligations.

PUBLIC INTEREST

In addition to the other requirements for approval of interLATA authority for Qwest, Section 271(d)(3)(C) precludes FCC authorization absent a determination that "the requested authorization is consistent with the public interest, convenience and necessity." Public interest issues, other than the QPAP, were the subject of the Facilitator's October 22, 2001 Report. Evidence on a number of issues were presented at the workshops, including the establishment of unbundled network element (UNE) prices, the level of competition that exists in Qwest's service territory, and prior conduct of Qwest as it relates to opening its markets to competition.

Written comments were filed on the public interest issues by AT&T, the Commission Staff and Touch America. In its comments, AT&T presented the same arguments it had presented to the Facilitator. Each of these issues has been properly addressed in the Facilitator's Report. In its comments, Staff addressed several issues, but was primarily concerned with the lack of UNE prices in Idaho. In its very brief comments, Touch America identified two areas concerning Qwest's performance as it relates to public interest. Touch America provided no discussion, but identified the following as its concerns:

1. Qwest wholesale billing practices and customer impacting service issues.
2. Qwest marketing and provisioning of interLATA services under the guise of lit capacity IRUs [indefeasible right of use] to customers in Idaho.

Touch America Comments p. 2. Touch America did subsequently provide to the Commission a copy of its complaint against Qwest filed at the FCC on these issues.

The primary argument addressed by the Facilitator regarding UNE prices was the relationship between the UNE prices and Qwest's retail rates. AT&T contended that, because Qwest's UNE rates exceed its retail rates, competitors cannot profitably enter the telecommunications market in Qwest's territory. Responding to AT&T's argument, the Facilitator quoted from the FCC's Order approving the application of SBC for interLATA authority in Kansas and Oklahoma. Regarding an upside down gap between UNE prices and retail rates, the FCC stated that "the Act requires that we review whether the [UNE] rates are cost-based, not whether a competitor can make a profit by entering the market." The Facilitator nonetheless was unable to determine whether Qwest's UNE prices are consistent with the public interest, stating that "whether or not Qwest UNE rates meet the checklist remains a question not resolved by these workshops." Facilitator's Report p. 6.

This Commission also is unable to determine whether Qwest's UNE prices are consistent with the public interest because Qwest has not established UNE prices for its Idaho services. The only UNE prices established for Qwest's Idaho services are found in an interconnection agreement resulting from a formal arbitration between AT&T and U S West. That agreement is dated July 27, 1998, and by its terms was effective for a three year period, although it also states that it "shall thereafter continue in force and effect unless and until a new agreement, addressing all of the terms of this Agreement, becomes effective between the parties." There is no evidence showing that Qwest's UNE prices reached through an arbitration that occurred four years ago satisfy current FCC TELRIC pricing requirements, that the arbitrated rates are currently effective because AT&T continues to purchase UNEs from the arbitrated prices, or that the UNEs identified in the interconnection agreement meet the complete list of UNEs now required for pricing.

The lack of UNE prices for Qwest remains a gap in Qwest's record for compliance with the Section 271 requirements. The Commission notes that a docket is underway in Idaho to

establish UNE prices for Qwest, Case No. QWE-T-01-11, but that case is currently not scheduled for completion. Until UNE prices are established for Qwest in Idaho, the Commission cannot conclude that Qwest has satisfied all of the FCC requirements for approval of Section 271 interLATA service authority.

CONCLUSION

The Commission adopts the September 21, 2001 report and October 22, 2001 report filed by the Facilitator. With regard to general terms and conditions, the Commission approves the resolution of disputes as proposed by the Facilitator, and approves two language changes recommended by AT&T. Qwest must revise its SGAT with the changes adopted or approved by the Commission. In addition, the Commission will review the change management process results Qwest will provide as part of the OSS test results.

The Commission finds Qwest has presented sufficient evidence to satisfy the Track A standard set forth in 47 USC 271(c)(1). Regarding the Section 272 separate affiliate requirements, the Commission will reserve its final decision until supplemental comments are filed by Staff. Finally, the Commission cannot find Qwest in compliance with public interest standards until UNE prices that satisfy the FCC's TELRIC standards are established.

This decision of the Commission is the last decision resulting from the workshops and reports filed by the Facilitator. Like his previous reports, the Facilitator's reports on general terms and conditions, Track A, Section 272 and public interest issues demonstrate careful and thorough analysis and discussion of the issues by all parties. The Commission appreciates the tremendous effort by the parties and the Facilitator to clarify difficult issues, present cogent arguments, and compile a detailed record for review by this Commission and the FCC.

The final draft report on the OSS test is scheduled to be filed with the participating state commissions later this month. Within 14 days of the draft report, the parties may file comments regarding the results of the test, and the Commission will include those comments in the record it will provide to the FCC.

DATED at Boise, Idaho this

day of April 2002.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

Vld/O:USWT0003_ws

EXHIBIT D

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF U S WEST)	
COMMUNICATIONS, INC.'S MOTION FOR)	CASE NO. USW-T-00-3
AN ALTERNATIVE PROCEDURE TO)	
MANAGE ITS SECTION 271)	COMMISSION FINAL DECISION
APPLICATION.)	ON QWEST CORPORATION'S
)	COMPLIANCE WITH SECTION 271
)	

This case commenced more than two years ago when U S WEST Communications, Inc., which became Qwest Corporation through a merger, filed a Notice of Intention to File a Section 271 Application and a Motion for Alternative Procedure to Manage the Section 271 Process. The Commission in response to Qwest's motion determined to join a multi-state collaborative process to establish a record on Qwest's efforts to satisfy the legal requirements for its entry into the interLATA market. Since then the Commission has issued a number of procedural orders and three decisions on the substantive issues, which collectively track the procedural history of the case, not restated here. The three substantive decisions required Qwest to respond by making changes to key components of its case, which Qwest provided in a filing on May 24, 2002, entitled Notice of Updated Statement of Generally Available Terms and Conditions [SGAT] and Request for Commission Acknowledgment that Rates are Effective on June 7, 2002.

Qwest also filed on May 31, 2002 an Affidavit of Jeffrey D. Owens essentially identifying the particular changes to its SGAT and averring that the changes were made to comply with the Commission's earlier decisions. Mr. Owens is a Senior Director in the Policy and Law Organization of Qwest Corporation, with responsibilities for managing aspects of Qwest's 271 efforts, including the filing of Qwest's SGAT in each of the fourteen states in which it provides local service. In his Affidavit, Mr. Owens states that the changes Qwest made to the Idaho SGAT fall within three categories:

- 1) Changes that were recommended or required by the Multi-State Facilitator or by this Commission;
- 2) Changes that resulted from consensus or other agreements or changes made at the request of CLECs in Idaho or other states, as well as

COMMISSION FINAL DECISION
ON QWEST CORPORATION'S
COMPLIANCE WITH SECTION 271

compliance language dictated by an order from the Federal Communications Commission or compliance language from other states that Qwest agreed to carry-forward to Idaho; and

- 3) Changes that resulted from the correction of typographical, grammatical, name change, capitalization, or other non-substantive matters, such as the deletion of redundant language or updates to web site addresses or technical standards.

Affidavit of Jeffrey D. Owens, p. 2 ¶ 4. The affidavit includes an extensive list of revisions that have been made to the SGAT to comply with Commission decisions.

BACKGROUND

Section 271 of the Telecommunications Act of 1996 (47 U.S.C. § 271) establishes the means for a Bell Operating Company (BOC), which includes Qwest, to begin providing in-region interLATA and interstate telecommunication services. The determination to authorize Qwest's entry into the interLATA market is made by the Federal Communications Commission (FCC), not this or any other state commission. 47 U.S.C. § 271(b). The three decisions already issued by the Commission address different parts of the Section 271 requirements: (1) Qwest's compliance with the 14-item checklist in Section 271 (the Checklist Decision) issued November 21, 2001; (2) Qwest's Performance Assurance Plan issued March 7, 2002 (the QPAP Decision); and (3) a decision on public interest, Track A, and Section 272 issued April 19, 2002 (the Public Interest Decision). Each decision identified issues that remained open and conditioned Commission approval on satisfactory resolution of those issues.

DISCUSSION

The Checklist Decision.

Section 271 contains a checklist of 14 items relating to access and interconnection a BOC must meet in each state where it provides local service. 47 U.S.C. § 271(c)(2)(B). The checklist identifies broadly stated requirements or categories for access and interconnection Qwest must provide to competitors desiring interconnection with its facilities. The Commission in the Checklist Decision stated it "is prepared, when consulted by the FCC, to report that Qwest satisfies the access and interconnection requirements of the competitive checklist in 47 U.S.C. § 271(c)(2)(B), so long as Qwest revises its SGAT as set forth in this decision and as may be necessary as this case proceeds to its conclusion." Checklist Decision p. 10. Qwest asserts in its

May 24, 2002 filing that it has responded to the issues identified by the Commission, including revisions to SGAT terms resulting from other state commission decisions.

The revised SGAT filed by Qwest on May 24 contains the revisions required by the Commission in its Checklist Decision. Included in the changes made by Qwest are those approved by the Commission in its Public Interest Decision, specifically to Section 5.12.2 of the SGAT relating to general terms and conditions of the SGAT. Because Qwest made the changes directed by the Commission, and the SGAT provides comprehensive terms for access and interconnection consistent with the checklist requirements, the Commission is prepared, when consulted by the FCC, to report the record establishes that Qwest satisfies the access and interconnection requirements of 47 U.S.C. § 271(c)(2)(B).

The QPAP Decision.

Part of the FCC's review of a Section 271 application is to determine that granting interLATA authority to the BOC "is consistent with the public interest, convenience and necessity." 47 U.S.C. § 271 (d)(3)(C). To insure the applicant will continue to meet the access and interconnection requirements after approval is granted, the FCC has determined the public interest standard may require a BOC to have a performance assurance plan (Plan or QPAP) in place. The QPAP provides specific standards for Qwest's delivery of services to competitor telecommunications companies (CLECs) and automatic penalties if the standards are not met.

In its QPAP Decision, the Commission expressed support for Qwest's Plan but was "not yet prepared to recommend approval of the QPAP, however, because changes must still be made." The QPAP Decision directed some specific changes. In addition, the Commission expected that completion of Qwest's operation support system (OSS) testing might result in changes to QPAP measurements, and the Commission anticipated that changes might be prudent based on changes made by other state commissions. QPAP Decision pp. 9-10. Qwest in its May 24 filing asserts that it has made the changes directed or anticipated by the Commission and that its filing complies with Commission instructions.

Staff reviewed the revised QPAP and believes it is consistent with the Commission's directives in its QPAP Decision. One change to the QPAP Staff believed might be appropriate in the interest of uniformity with other state commission decisions relates to the triggering of Tier 2 penalty payments. The relevant terms approved by the Commission were those recommended by the Facilitator in his QPAP Report. Qwest's original QPAP called for payment of Tier 2

penalties only if three consecutive months of performance measures are missed by Qwest. The Facilitator recommended changes that provide for Tier 2 payments if Qwest misses the performance measures in two out of three consecutive months and subsequently misses the measures again in the calendar year. In monitoring the decisions of other state commissions, Staff noted that some commissions appeared to be requiring Tier 2 payments for each month that the performance measures are missed. According to Staff, Qwest asserts that it has not made that change to its QPAP in any other state, but has committed to providing the change to the Idaho QPAP “in the event that Qwest agrees to remove the phase-in of Tier 2 payments for the QPAP in any state that participated in the ROC multi-state QPAP process.”

Another change to the QPAP worth noting results from the Commission’s instructions for Section 16.1 of the QPAP describing the 6-month review and future changes to the QPAP. In its QPAP Decision, the Commission stated “that the QPAP should leave open the possibility that the Commission may broaden the review if necessary to respond to circumstances arising from actual experience with the QPAP.” QPAP Decision p. 8. The Commission also noted that Section 16.1 stated that changes could not be made to the QPAP without Qwest’s agreement. The Commission required that the language be modified “to state that Qwest will make changes if the Commission so directs, whether Qwest agrees or not with the changes.” QPAP Decision pp. 8-9.

In response to the Commission’s instructions, the revised QPAP provides that Qwest, a CLEC, or the Commission every six months “may initiate a review of the performance measurements to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measurement to high, medium, or low, Tier 1 or Tier 2.” The QPAP also now limits Qwest’s potential liability for changes to the QPAP it does not agree with “to 10% of the monthly payments that Qwest would have made absent the effect of such changes as a whole.” That 10% payment collar is in effect for 12 months following the change. For changes to performance measures that have not been submitted to the ROC PID administration process, however, a CLEC may request that the 10% collar be lifted after only six months of payments where the CLEC has received 80% or less of what the total payments would have been without the collar.

The Commission stated in its QPAP Decision that “the QPAP is well on its way to meeting the FCC’s zone of reasonableness standard,” the review standard used by the Commission in the QPAP Decision. Qwest responded to the Commission’s instructions to make changes to the QPAP, as identified in the revised QPAP filed on May 24. The Commission believes the QPAP now adequately satisfies the FCC’s zone of reasonableness standard of review.

The Public Interest Decision.

Although the QPAP is properly part of the FCC’s public interest inquiry, the Commission issued a separate Public Interest Decision, in addition to the QPAP Decision, to better address the variety of issues comprising the public interest standard. The Public Interest Decision contains several reservations to Commission approval. In that decision the Commission stated it (1) would review the change management process Qwest was to provide with the OSS test results, (2) would reserve its final decision on the Section 272 separate affiliate requirements until Staff filed supplemental comments, and (3) could not find Qwest in compliance with public interest standards until unbundled network elements (UNE) prices that satisfy the FCC’s TELRIC standards are established.

1. OSS Testing Results and Change Management Process.

The Commission acknowledges receipt of the final report of KPMG Consulting and HP Consulting covering the third-party test of Qwest’s Operational Support System (OSS), including the change management process. Staff reported it believes the testing process was comprehensive, thorough and fair. The testing identified numerous concerns and issues resulting in a number of improvements to Qwest’s systems. The final report concludes that Qwest’s systems provide a competitor with the basic tools and services it needs to function and that these are provided in a manner that affords competitors a reasonable chance to compete.

The final report also indicates that a number of issues remained unresolved at the conclusion of the test. The Commission expects that Qwest will continue its efforts to address these issues. Should the FCC approve Qwest’s application for interLATA authority, the Commission will continue monitoring and observing Qwest’s actual wholesale service performance. The Commission finds that the draft and final reports show that Qwest is providing CLECs with non-discriminatory access to OSS and that it is likely to serve CLECs in a manner consistent with the requirements of Section 271.

2. Section 272 Separate Affiliate Requirements.

Once a BOC receives authorization to provide interLATA services, Section 272 of the Telecommunications Act requires that those services be provided through affiliate entities separate from the BOC. In its Public Interest Decision, the Commission stated regarding Qwest's compliance with the Section 272 requirements that "the Commission conditionally finds that Qwest has put in place a separate affiliate to comply with the requirements of Section 272, but will reserve a final decision until Staff has filed its supplemental comments." Public Interest Decision p. 10. Staff did not file supplemental comments, and its concerns about Section 272 compliance relate to continued monitoring of Qwest's separate affiliation transactions. Staff recommended the Commission accept the record on the Section 272 requirements, but review Qwest's continued compliance in future audits, including one to occur six months after Qwest receives FCC approval for interLATA service.

The only condition the Commission placed on its conclusion that "Qwest has put in place a separate affiliate to comply with the requirements of Section 272" was the filing of supplemental comments by Staff. That condition has been removed by Staff's recommendation that the Commission continue to monitor Qwest's separate affiliation transactions, which the Commission will do through already planned audits.

3. UNE Prices and TELRIC Standards.

In its Public Interest Decision, the Commission stated "the Commission cannot find Qwest in compliance with public interest standards until UNE prices that satisfy the FCC's TELRIC standards are established." Public Interest Decision p. 12. In its May 24 filing Qwest asked the Commission to approve revised UNE prices contained in the filing effective June 7, 2002, pending resolution of the UNE cost docket. According to Qwest's filing, the Company "intends that these new, lower rates remain in effect for its CLEC customers until one of the following occurs: the Idaho Public Utilities Commission establishes a different rate in a cost docket; a mutually acceptable different rate is negotiated between Qwest and its customers; or a change to applicable law takes place triggering a rate change pursuant to any 'change in law' provision of an applicable interconnection agreement." Qwest Notice of Updated SGAT p. 7. Qwest asserts that its updated SGAT "provides substantial reductions in key UNE prices that would not otherwise be reduced until completion of the cost docket."

AT&T in a letter sent to the Commission complained about Qwest's revised UNE prices, claiming Qwest's representation that the new rates will not increase rates to CLEC customers is incorrect. AT&T acknowledges Qwest made voluntary reductions to a "limited" number of rate elements, but believes some of the new rates could actually increase costs, and thus AT&T "objects to any attempt by Qwest to unilaterally increase rates currently set forth in the interconnection agreements between AT&T and Qwest." AT&T also agrees the "reductions offered by Qwest adjust the rates closer to being TELRIC compliant."

There are several responses to the concerns raised by AT&T. First, in a letter AT&T received from Qwest, which was included in AT&T's letter to the Commission, Qwest states it will charge CLECs the lowest rates, whether in the revised filing or in existing interconnection agreements. That commitment, which the Commission expects Qwest to honor, should ensure no CLEC's costs increase as a result of the revised UNE rates. Second, AT&T is a party in the Commission's on-going UNE price case and should raise its concerns in that docket. Appropriate UNE rates will be established by the Commission after considering the evidence offered by all parties, including AT&T. Finally, the revised UNE rates are part of Qwest's SGAT, which is "a statement of the terms and conditions that [a BOC] generally offers within that State to comply with the [interconnection] requirements of section 251 and the regulations thereunder." 47 U.S.C. § 252(f)(1). When such statements are filed with a state commission, the commission may permit the statement to take effect, which "shall not preclude the State commission from continuing to review" the statement. 47 U.S.C. § 252(f)(3) and (4). The Commission will review the appropriateness of the UNE prices in the UNE cost case, and will require the rates approved in that case to be included in Qwest's SGAT.

In short, the Commission believes the revised UNE prices are reasonable, pending resolution of the cost case, and the Commission will permit them to be effective as of June 10, 2002. The prices contained in the compliance filing provide reductions in key UNE prices that would not otherwise occur until completion of the cost docket. Revised prices for two important elements—unbundled loops and local switching—are based on TELRIC prices established by the Colorado Commission. For the local loop price, Qwest represents that it adjusted the price established in the Colorado case to reflect Idaho specific data, as determined by the FCC's Cost Synthesis Cost Model. In the words of AT&T, the resulting price adjustments "are closer to being TELRIC compliant."

Motion Filed by Touch America, Inc.

The Commission also received on June 4, 2002, a motion filed by Touch America, Inc., asking for an order “staying these proceedings pending resolution of Touch America’s complaints before the FCC that raise critical questions concerning Qwest’s current and potential future compliance with [Section 271] requirements.” As an alternative, Touch America “requests that the Commission condition its recommendation regarding Qwest’s 271 application on the FCC’s determination regarding the Touch America complaints.” Touch America has filed complaints with the FCC alleging, among other things, that Qwest’s provision of lit fiber on an exclusive basis to certain customers, called infeasible right of use (IRU), violates the interLATA service prohibition of Section 271.

The timing of Touch America’s motion and the nature of the issues identified are cause for the Commission to deny the motion. Touch America provides no indication that its complaints about Qwest’s conduct have anything to do with Idaho customers or this Commission’s intrastate jurisdiction. Touch America has apparently filed its complaints in the proper forum—the FCC—where they will be decided. The motion itself demonstrates the inappropriateness of the motion before this Commission. For example, Touch America states “it would be illogical for the FCC to approve a Qwest 271 application at this time,” based on the complaints filed by Touch America. The Company states it has, “in a complaint action filed before the FCC, detailed the many reasons why the lit fiber IRUs violate Section 271.” Touch America Motion p. 10. Touch America contends this Commission, if the FCC determines lit fiber IRUs are akin to UNEs, “should determine that it has a duty under Section 271(c)(2)(B)(ii) of the Act to ensure that Qwest offers nondiscriminatory access to and pricing for the lit fiber IRUs in accordance with Sections 251(c)(3) and 252 (d)(1) of the Act.” Touch America Motion pp. 11-12.

Touch America apparently has raised serious issues in its complaints filed with the FCC and the Commission is confident the FCC will give them serious consideration. As it is for the FCC to determine whether Qwest will be granted interLATA service authority, it is for the FCC to determine the validity of Touch America’s complaints and their effect, if any, on Qwest’s FCC application for interLATA authority. The Commission denies Touch America’s motion for an order staying this proceeding.

CONCLUSION

Qwest, numerous intervenors, Staff and the Facilitator have participated in a lengthy process, involving many complex issues and significant detail, and numerous multi-state collaborative workshops. This process has taken the better part of two years and an incredible amount of effort and resources. The result is a thorough review of the 14-item checklist, Qwest's Performance Assurance Plan, a quality OSS final product along with an adequate review of the public interest and Track A items as required by 47 U.S.C. § 271.

Upon review of the May 24 filing, including the Affidavit of Mr. Owens, the Commission believes Qwest has responded to the directives the Commission stated in its three previous decisions, and has made the necessary changes to its SGAT or otherwise addressed the conditions put forth by the Commission. The Commission accepts the May 24, 2002 SGAT as the Company's final SGAT filing, subject to any further review necessitated by completion of the UNE cost case.

With the revised SGAT filing, the Commission is prepared, when consulted by the FCC, to advise that the record establishes in this proceeding that Qwest has adequately addressed the Section 271 requirements. Through the planned reviews and other appropriate means, the Commission will continue to monitor Qwest's performance in the future to prevent backsliding and to ensure that the doors to competition remain open.

DATED at Boise, Idaho this

day of June 2002.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

bls/O:USWT003_USWT003_FinalDecision_ws

EXHIBIT E

Mark P. Trinchero
Davis Wright Tremaine LLP
Suite 2300
1300 SW Fifth Avenue
Portland, Oregon 97201
Phone: 503-241-2300
Fax: 503-778-5299

Gregory H. Hoffman
Senior Attorney
AT&T Corp.
795 Folsom Street, Room 2161
San Francisco, California 94107
Phone: 415-442-3776
Fax: 415-977-6234

Attorneys for AT&T Communications of the Mountain States, Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of AT&T Communications)
of the Mountain States for an Investigation into) Case No. USW-T-00-3
U S WEST Communications, Inc.'s Compliance with)
Section 271 of the Telecommunications Act of 1996)

**AT&T'S COMMENTS ON THE ROC OSS FINAL REPORT AND REQUEST
FOR RECONSIDERATION OF THE COMMISSION'S
JUNE 10, 2002 ORDER**

AT&T Communications of the Mountain States, Inc. ("AT&T") respectfully
submits these Comments on the ROC OSS Final Report. Although the Idaho Utilities and
Transportation Commission (the "Commission") issued an order on June 10, 2002 indicating it is
prepared to advise the FCC that "Qwest has adequately addressed Section 271 requirements,"³
AT&T makes this filing because the record on which the Commission entered that Order is
incomplete. Specifically, the Commission stated that the "draft and final reports [of the ROC
OSS Test] show that Qwest is providing [competitive local exchange carriers] CLECs with
nondiscriminatory access to OSS and that it is likely to serve CLECs in a manner consistent with

³ See *Commission Final Decision On Qwest Corporation's Compliance With Section 271*, Case No. USW-T-00-3, (June 10, 2002) at 9.

the requirements of Section 271.”⁴ This conclusion was made without affording CLECs an opportunity to comment on the final ROC OSS report.⁵ Other states, such as Washington,⁶ have allowed for comments and even conducted workshops or hearings on the ROC OSS. Moreover, the Consumer Advocate Staff of the Wyoming Public Service Commission recently issued comments (dated July 7, 2002) concluding that the ROC OSS was incomplete and that “Qwest should be denied 271 authority until such time as it successfully demonstrates satisfactory completion of the testing requirements.”⁷

Thus, although the Commission and its Staff have evaluated the Final Report, the Commission’s conclusions, without having received comments or evidence from other interested parties, are not based on a full and complete record. AT&T respectfully requests that the Commission reconsider its June 10, 2002 Order in light of the issues AT&T raises herein.

I. INTRODUCTION

The Regional Oversight Committee’s test of Qwest’s operational support systems (“OSS”) has identified many significant deficiencies in the OSS access that Qwest provides to CLECs. The more significant deficiencies include:

- 1) Qwest order processing personnel making an excessive rate of human errors in the processing of CLEC orders,
- 2) inaccurate Qwest reported performance data as evidenced by KPMG Consulting’s inability to independently reproduce Qwest’s performance data,
- 3) discriminatory treatment in the provisioning of jeopardy notice,
- 4) insufficient capability to provision dark fiber,
- 5) insufficient capability to provision enhanced extended links (“EEL”s),

⁴ *Id.* at 5.

⁵ There are other issues in the June 10 Order on which interested parties were not provided with an opportunity to comment, such as whether Qwest’s most recent SGAT filing and Performance Assurance Plan comply with previous Commission Orders. AT&T reserves its right to comment on these issues.

⁶ The Washington Utilities and Transportation Commission conducted hearings on the OSS ROC Test on June 5-7, 2002.

⁷ See *Consumer Advocate Staff Comments Regarding the ROC OSS Final Report*, filed in DKT NO. 70000-TA-00-599, Rcd. No.5924, dated June 7, 2002 at 7 (attached hereto as Appendix A).

- 6) longer intervals for the provisioning of UNE-P services that do not require the dispatch of a Qwest technician than for similarly situated retail customers,
- 7) longer provisioning intervals for business resale services that do not require the dispatch of a Qwest technician than for similarly situated retail customers,
- 8) inaccurate disposition codes for CLEC trouble reports, and
- 9) inadequate and unstable processes for the production of DUF records.

AT&T will describe each of these deficiencies in more detail in the comments that follow.

II. SPECIFIC TEST FINDINGS

A. Pre-Ordering, Ordering and Provisioning

The OSS test has demonstrated that Qwest has serious problems in its manual handling of CLEC orders. Qwest manually handles orders when the CLEC submits orders:

- Via manual methods (i.e. Facsimile);
- Via an electronic interface and the characteristics of the orders require manual processing; and
- That contain errors.

1. The Rate of Human Errors is Excessive

a. The Number of CLEC Orders That Qwest Manually Handles and the Percentage of the Total Number of CLEC Orders is Both High

A high percentage of a CLEC' orders is manually handled by Qwest in a given month. This high percentage of manually handled orders also translates into large quantities of manually handled orders. The below chart shows the percentage of CLEC orders manually handled by Qwest as compared to the total number of orders submitted by the CLEC and the total number of manually handled orders for four key services:

April 2002 Results	Resale	Unbundled Loops	Local Number Portability	UNE-P	Aggregate
% of CLEC Orders	26.3%	43.9%	60.0%	45.2%	37.2%

Manually Handled by Qwest ⁸					
Total Number of CLEC Orders Manually Handled by Qwest ⁹	379 ¹⁰	157	11		547

In addition to the valid orders that are manually processed by Qwest personnel, in April of 2002, Qwest also manually processed 151 rejected Idaho CLEC orders.¹¹ Qwest personnel touch and manually handle nearly 2,500 orders for Idaho CLECs in a month. With that amount of manual processing, it is critical that Qwest order processing personnel know how to properly treat those orders.

b. KPMG Consulting Found That Qwest Representatives That Manually Handle CLEC Orders Create Far Too Many Human Errors in CLEC Orders.

KPMG Consulting found that Qwest personnel did not know how to properly treat CLEC orders and that there were excessive amounts of human errors being made by Qwest personnel as they processed CLEC orders. These human errors affected the due dates that Qwest provided the pseudo-CLEC and in some cases resulted in the pseudo-CLEC order being given a due date longer than it should have received. The errors also affected Qwest's performance results. The errors caused orders to be excluded from the performance results calculation that should not have been and orders to be included that should not have been. The human errors also resulted in inaccurate calculation of provisioning intervals.

⁸ Qwest Performance Results, Checklist Format, Idaho, May 2001 – April 2002, May 16, 2002, ("Idaho PID Results") PIDs PO-2A-1 and PO-2A-2, pp. 50 – 53.

⁹ *Id.* PIDs PO-5B-1(a), PO-5B-2(a), PO-5B-1(b), PO-5B-2(b), PO-5B-1(c), PO-5B-2(c), PO-5C(a), PO-5C(b), and PO-5C(c).

¹⁰ Results combined for resale and UNE-P.

¹¹ *Id.* PIDs PO-3A-1, PO-3B-1, and PO-3C pp. 54 - 55.

KPMG Consulting discovered this problem through the submission of pseudo-CLEC transactions and calls to the CLEC help desk as part of the pre-ordering, ordering and provisioning tests. When either KPMG Consulting or Hewlett-Packard received an unexpected response from a pseudo-CLEC transaction or a call to the CLEC help desk, an observation or exception identifying the unexpected response was created. KPMG Consulting noticed that in many of Qwest's responses to observations and exceptions created by KPMG Consulting and Hewlett-Packard that Qwest was attributing the cause of the problem to human error and that additional training of the personnel that made the errors would remedy the problem. After seeing far too many Qwest responses to problems that attributed the problem to human error and prescribing additional training as the remedy, KPMG Consulting stated that, "KPMG Consulting has identified a pattern in Qwest's Observation and Exception responses that refer to the need for additional training and/or training enhancements."¹² As background to that finding KPMG Consulting stated:

Qwest's responses to 75 Observations and Exceptions, raised by both KPMG Consulting and Hewlett-Packard Consulting (HPC), state that training initiatives and/or enhancements have been undertaken to remedy the issues raised. Of these 75 responses, 49 describe additional training measures that directly impact Interconnect Service Center (ISC) and Service Delivery Coordinator (SDC) personnel.¹³

KPMG Consulting described the human error issue as follows:

As recently as January 2002, KPMG Consulting and HPC have identified issues in the POP Feature/Function Evaluation to which Qwest has responded by stating it would perform corrective actions in the form of additional training for the ISC and SDC to remedy the reported problems. However, as issues raised in "new" Observations and Exceptions continue to point to additional training needs for the SDC and ISC, KPMG Consulting believes that the adequacy of Qwest's ISC and SDC training programs may be insufficient.¹⁴

¹² Observation 3086, January 29, 2002.

¹³ *Id.*

¹⁴ *Id.*

In response to Observation 3086, Qwest stated that it was: 1) making system improvements to reduce the possibility of human errors, (2) improving its documentation, and (3) was reemphasizing the quality control initiatives already in place.

c. **KPMG Consulting Used the Wrong Approach in Deciding to Close Observation 3086.**

KPMG Consulting observed the problem of excessive human error as a direct result of transaction testing and calls to Qwest's help desk. When Qwest personnel were manually handling pseudo-CLEC orders and responding to pseudo-CLEC calls to the Qwest's help desk they found that Qwest personnel were making far too many mistakes. In verifying that Qwest's purported improvements had indeed reduced the rate of human error to acceptable levels, the obvious path would have been additional transactions designed to be manually handled and additional calls to Qwest's help desk.

Instead of taking the obvious approach of additional transaction testing and additional calls to the Qwest help desk, KPMG Consulting took the expeditious and artificial approach of reviewing Qwest documentation, interviewing Qwest employees and observing Qwest employees at the order processing centers and CLEC help desk. The Qwest documentation describes what **should** occur at the Interconnect Service Center and Qwest help desk. As was evident by the excessive amount of human error, what **should** be happening to CLEC orders and requests for assistance was, in fact, not happening. KPMG Consulting's approach of interviewing Qwest employees and observing Qwest employees at the Interconnect Service Center and CLEC help desk is quite artificial. KPMG Consulting's interviews and observations virtually ensured that the employees interviewed and observed would be on their best behavior. When an Interconnect Service Center representative or help desk representative is confronted

with some stranger looking over their shoulder as they do their work, that representative is sure to be very cognizant of doing everything they should be doing.

Given the unrealistic and artificial approach that KPMG Consulting chose to verify that the rate of human errors had reached acceptable levels and that no additional transactions or calls to the help desk were employed in the verification, it is not surprising that KPMG Consulting reached the following conclusion:

KPMG Consulting has conducted interviews with Qwest training staff and ISC managers, on-site observations at several ISC locations, and reviewed supporting documentation to verify the training and quality assurance procedures described by Qwest are in place and are followed. KPMG Consulting finds that these procedures sufficiently address the concerns raised in this observation.¹⁵

d. **Observation 3110 Showed That The Rate of Human Errors Made By Qwest Order Processing Personnel Had Not Been Reduced to Acceptable Levels.**

During the retest associated with Exception 3120 there were nine LSRs for UNE-P and resale services that were manually processed by Qwest personnel. Out of those nine LSRs, Qwest personnel made human errors on two of them (22.2%).¹⁶ There were also eighteen line sharing orders that were manually handled by Qwest personnel. Out of those eighteen orders there were at least three errors made on the orders (16.67%).¹⁷

As a result of the excessive rate of human errors on a limited set of Exception 3120 retest orders, KPMG Consulting reviewed historical results for orders that Qwest manually handled since its purported improvements designed to greatly reduce the rate of human error in Qwest's processing of orders. Of the forty-nine orders manually processed by Qwest, KPMG Consulting found Qwest had made human errors on seven of them (14.3%). In total, KPMG Consulting examined seventy-six pseudo-CLEC orders that were manually handled by Qwest personnel as

¹⁵ Observation 3086, KPMG Consulting Second Supplemental Response, April 12, 2002.

¹⁶ Observation 3110, May 23, 2002.

¹⁷ *Id.*

part of the Exception 3120 retest and historical data and found twelve instances of human error (15.8%). KPMG Consulting's determination that 15.8% of the manually handled pseudo-CLEC orders had human errors is ample and sufficient evidence to show that Qwest had, in fact, not remedied the excessive rate of human errors that was the subject of Observation 3086.

Surprisingly, KPMG Consulting describes its examination of seventy-six CLEC orders and a finding of twelve orders with human errors as a "limited review."¹⁸ KPMG Consulting has made a determination of "Satisfied" for OSS test evaluation criteria involved with manually processed orders with sample sizes smaller than seventy-six.¹⁹ If less than seventy-six samples were not considered a "limited review" and allowed KPMG Consulting to assign a "Satisfied" result to evaluation criteria related to the manual processing of order, then seventy-six samples should have been enough for KPMG Consulting to assign a result of "Not Satisfied" to the relevant evaluation criteria.²⁰

It was reassuring that KPMG Consulting finally realized "that the only way to properly address this observation [excessive levels of human error] is to conduct a retest that focuses on orders that drop out for manual handling."²¹ Unfortunately, KPMG Consulting did not realize this when it decided to close Observation 3086 based upon interviews and observations rather than retest transactions that were manually processed.

In light of KPMG Consulting's timorous conclusion that seventy-six samples was a "limited review" that warranted a "Unable to Determine" rather than a "Not Satisfied" result for the relevant evaluation criteria, it appears Qwest decided to cut its losses and take the "Unable to

¹⁸ Observation 3110, KPMG Consulting Second Response, May 28, 2002.

¹⁹ See e.g., Evaluation Criteria 12-6-2 (75 samples), 12-6-5 (38 samples), 12-7-7 (47 samples), and 12-8-1 (23 samples).

²⁰ KPMG Consulting stated that the Evaluation Criteria 12.8-2, 12-11-4 and 14-1-44 were associated with Observation 3110.

²¹ Observation 3110, KPMG Consulting Second Response, May 28, 2002

Determine” result rather than risk further exposure of its continuing problems with excessive rates of human error and a “Not Satisfied” result. Consequently, Qwest refused KPMG Consulting’s suggestion of further retesting.

Because of the disturbing level of human errors discovered by KPMG Consulting during the retest of Exception 3120 and its review of historical test data, KPMG Consulting assigned a result of “Unable to Determine” to the evaluation criterion “Procedures for processing electronically submitted non-flow through orders are defined, documented, and followed.”²² With the very high volumes of CLEC orders that are manually processed by Qwest, a failure by Qwest to achieve a “Satisfied” result for the processing of non-flow through orders is significant enough to justify a finding of non-compliance with checklist item 2.

e. **Qwest’s Excessive Rate of Human Errors Demonstrates That Its Performance Results Data Are Inaccurate and Unreliable.**

KPMG Consulting found that Qwest’s excessive rate of human error in Qwest’s manual processing of CLEC orders also affected the accuracy and reliability of Qwest’s reported performance results data. Specifically, Qwest representatives were assigning incorrect application date to orders.²³ The application date is essentially the point at which Qwest “starts the clock” for the provisioning of orders. Qwest uses the application date and time as the basis for its assignment of due dates and its calculation of provisioning intervals. The application date and time directly impacts the OP-3 Commitments Met, OP-4 Installation Interval, and OP-6 Delayed Days PIDs. It impacts the OP-3 measurement in the assignment of due dates. Qwest assigns due dates based upon the application date and time. If Qwest representatives determine the application date and time in error, it could result in Qwest assigning longer due dates than

²² *Qwest Communications OSS Evaluation, Final Report* (“Final Report”), Version 2.0, May 28, 2002, p. 145, Evaluation Criterion 12.8-2.

²³ Observation 3110, KPMG Consulting Second Supplemental Response, May, 28, 2002.